

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2013041197

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 26, 2013, in Torrance.

Claimant was represented by her father.¹ Claimant was not present at the hearing.

Antoinette Perez, Program Manager, represented Harbor Regional Center (HRC or Service Agency).

A Korean-language interpreter was provided for claimant's father during the hearing.

The documentary and testimonial evidence described below was received, and argument was heard. The record was closed and the matter was submitted for decision on June 26, 2013.

ISSUE

The parties agreed that the issue presented for decision is:

Whether the Service Agency should provide a parent voucher to claimant's father to pay for claimant to attend the afterschool program at Top Learning Center.

¹ Claimant and her family members are identified by titles to protect their privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits A-J.

Testimonial: Pablo Ibanez, HRC program manager; claimant's father.

FACTUAL FINDINGS

Claimant's Background

1. Claimant is a 16-year-old girl who was determined to be eligible for regional center services in 2007, on the basis of autism, by Frank D. Lanterman Regional Center (FDLRC). Claimant also has diagnoses of expressive language disorder (provisional) and anxiety disorder, not otherwise specified (especially with separation anxiety issues).

2. Claimant's family moved from South Korea to Glendale in 2007, due to claimant's father's employment. The family lived in Glendale from 2007 until August 2012, when the family moved to Cerritos, where they currently reside. Claimant's regional center case was transferred from FDLRC to HRC on August 7, 2012, after the family moved to Cerritos.

3. Claimant lives at home with both parents and her brother, who is two years younger than her. Claimant's parents are her primary caregivers. Both parents work full-time outside of the family home. There are no extended family members living in the United States. Claimant's family are active members of their church, whose members, according to claimant's father, provides the family with much support.

4. Claimant is eligible to receive special education services from her school district. She attends a special day class in high school. Claimant recently completed the tenth grade. She is on diploma track and expected to graduate from high school in 2015.

5. Claimant is ambulatory and has no physical limitations. She can verbally communicate with others and follow directions. The family's primary language at home is Korean. Claimant can express herself in full sentences in Korean and simple sentences in English. Claimant is able to complete most of her self-care tasks with prompts and reminders. She can feed herself with a spoon and fork and get herself a snack when hungry. She can take care of her daily grooming, hygiene and toileting needs on her own. She is able to fasten zippers and buttons on her own, but she does not yet know how to tie shoelaces. Claimant does not display aggressive or self-injurious behaviors or engage in property damage. However, she bites her nails up to 20 times per week, rips tissues and rolls them into balls, and plays with eraser dust, to manage her anxiety instead of verbally expressing her needs. Claimant prefers playing with children who are younger than her, as they often match her developmental level in play interests. Claimant serves as a teacher's assistant to

children ages three to five at her church every Sunday. Claimant does not go anywhere in the community alone but has safety awareness when crossing streets.

Current Service Request

6. (A) Claimant's current individual/family service plan² with HRC was developed from information gathered at planning meetings held on August 21, 2012, and September 27, 2012 (IFSP). The goals in the IFSP are primarily to have claimant's family learn the services and supports available to them from the regional center system and other resources, such as the school district and government programs. To assist the family in achieving those goals, HRC agreed to provide ongoing trainings, support groups, information, and case management supports.

(B) In addition, the IFSP goals for claimant at home is that she will learn to tie a knot for her shoelaces, increase her receptive/expressing language skills in general with focus on expressing her emotions, and increase her independence as a teenager and decrease her need for supervision at home. To assist claimant in achieving those goals, HRC agreed to "continue to assist the family in accessing all resources to assist [claimant] to manage her feelings of anxiety as well as discuss the generic supports of In-Home Supportive Services (IHSS) and application to Medi-Cal at the family's request," and that claimant's HRC counselor would visit claimant and her family annually to update her IFSP and provide support and information as needed.

7. HRC's service policy defines "day/afterschool care" as "care and supervision for pre-school and school aged children with specialized care needs whose parents are unavailable to provide such care and supervision because they are engaged in full time work or vocational training."

8. Claimant has a need for afterschool day care services. Both of her parents work full-time outside the home. Claimant requires supervision afterschool until her parents return home from work. As stated in the IFSP, "[Claimant] reported that she is afraid of staying home alone after school and prefers to attend an after-school program with her brother at Top Learning Center to avoid staying home alone." Claimant has been attending Top Learning Center from August 2012 to the present time. Her parents have been paying for Top Learning Center themselves.

9. Claimant's father has requested that HRC provide him with a parent voucher to pay for claimant's afterschool care at Top Learning Center. When the family lived in

² The Service Agency uses the term Individual/Family Service Plan (IFSP), which is derived from the federal Early Intervention Program for Infants and Toddlers with Disabilities, known in California as the "Early Start Program," which applies to infants and toddlers under the age of three. (See, Cal. Code Regs., tit. 17, §§ 52100 et seq.) The IFSP is deemed to be synonymous with the individual program plan (IPP) required by the Lanterman Act.

Glendale, and claimant's case was assigned to FDLRC, claimant attended Apple Tree Afterschool Center (Apple Tree). Claimant's family paid for the Apple Tree day care services with a voucher issued by FDLRC for that service. Claimant's father was the vendored family member for the voucher. Claimant's father wants to receive a similar voucher from HRC to pay for claimant's afterschool day care with Top Learning Center.

10. Top Learning Center is an academic enhancement program. The program's website states, in part: "[O]ur programs are designed to enhance students' understanding of concept [sic] being taught at school by providing supplementary work that parallels their current school work. By supporting and reinforcing students' school work, our educators help students gain confidence and self-assurance to boost their participation in school and get better grades." The Top Learning Center program does not have any specific service or feature that addresses claimant's autism. The program's website states: "If your child has special needs our staff can advise you where to seek help." Claimant's father was informed that claimant is the first child with special needs to attend Top Learning Center.

11. Top Learning Center is not a vendored service provider with HRC. On October 25, 2012, claimant's HRC counselor visited claimant's afterschool program at the Top Learning Center in Cerritos and met with the program's director, Mr. Lee, and claimant's father. The HRC counselor discussed the vendorization process with Mr. Lee, who expressed that he was interested in becoming a vendor with HRC. In or about November 2012, the HRC counselor initiated the vendorization process for Top Learning Center. HRC did not receive Top Learning Center's vendor application until January 22, 2013. The application was incomplete as it was missing, among other things, proof of a child care license issued by the California Department of Social Services (DSS). Ultimately, in March 2013, Top Learning Center decided to quit the vendorization process and not complete the vendor application.

12. While Top Learning Center's vendor application was still in process, the HRC counselor discussed alternative day care providers and other options with claimant's father. HRC offered to purchase afterschool day care for claimant from Los Cerritos YMCA, which is a vendored provider. Claimant and her father visited the program in January 2013. After the visit, claimant expressed her preference to stay with the after school program at Top Learning Center.

13. On April 1, 2013, claimant's HRC counselor and HRC program manager Pablo Ibanez met with claimant's father to discuss his continued request for a voucher to pay for claimant's afterschool program at Top Learning Center. During that meeting, HRC agreed that claimant "does have a current supervision need given a lack of independent living skills training," and reiterated its offer to purchase afterschool care services through the Los Cerritos YMCA. However, HRC did not agree with providing a voucher as requested by claimant's father.

14. On April 30, 2013, claimant's father filed a fair hearing request, on claimant's behalf, requesting that HRC provide a parent voucher to pay for claimant's afterschool

program at Top Learning Center. In the fair hearing request, claimant's father also noted that he "requested a denial letter but they have not provided me with one." Claimant's father had requested, on March 25, 2013, that HRC send him a written denial letter or Notice of Proposed Action so that he could appeal HRC's decision regarding his voucher request.

15. On May 30, 2013, HRC sent a letter to claimant's father which summarized the meeting held on April 1, 2013, with the HRC counselor and program manager and claimant's father.

16. On June 12, 2013, an informal meeting was held by HRC program manager Antoinette Perez with claimant's father, where they discussed his request for HRC to fund claimant's afterschool program at Top Learning Center and HRC's offer to fund afterschool day care at the Los Cerritos YMCA. During that meeting, claimant's father indicated he was not opposed to claimant attending the Los Cerritos YMCA, but it was claimant's preference for Top Learning Center that prevented him from accepting HRC's offer. By letter dated June 17, 2013, Ms. Perez notified claimant's father that she would be "upholding HRC's offer to fund for childcare for [claimant] at the Los Cerritos YMCA," and she did "not see an extenuating circumstance that would require funding of a parent voucher."

17. Claimant's father wants HRC to fund claimant's attendance at Top Learning Center because it is the afterschool program preferred by claimant. According to father, claimant prefers Top Learning Center because the staff and other children who attend the program are Korean and Korean speakers. Claimant is more comfortable in that environment. Claimant also prefers Top Learning Center because her brother also attends the program. According to claimant's father, claimant was "a little bit afraid" when she visited the Los Cerritos YMCA because the children in that program "looked much more severe than her." He admitted that the Top Learning Center has no specific feature or program that addresses claimant's autism.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)³ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 13-14.)

2. In the fair hearing request, claimant's father indicated that he had requested a written denial letter from HRC regarding its denial of his request for a parent voucher to purchase afterschool day care services. Prior to the filing of the fair hearing request on April 30, 2013, HRC did not provide a denial letter to claimant's father. The purpose of such a

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

denial letter/Notice of Proposed Action, in general, would be to inform the consumer of the reasons for the regional center's decision or action, thereby permitting the consumer to present evidence at a fair hearing that contests the decision or action. (See, §§ 4710, 4710.5.) When a regional center does not provide written notice of its decision, the appropriate remedy is determined by a consideration of whether claimant was prejudiced at the hearing. In this case, the ALJ concludes that claimant was not prejudiced at the hearing. At the start of the hearing, claimant's father indicated he was ready to proceed with the hearing, as did the HRC representative.

3. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan (IPP). (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

4. The Lanterman Act contemplates that the provision of services shall be a mutual effort by and between regional centers and the consumer and/or her family. The foundation of this mutual effort is the formulation of a consumer's IPP. The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a).) The creation of an IPP is a collaborative process. (§ 4646.) The IPP is created after a conference consisting of the consumer or her representatives, regional center representatives and other appropriate participants. (§§ 4646 and 4648.) Thus, the Lanterman Act contemplates cooperation between the parties and the sharing of information in determining services and supports for a consumer and her family. The preferences of the consumer or her family are an important factor, but not the only factor, to be considered in the IPP process.

5. Regional center funds may not be used "to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).) These are commonly referred to as "generic resources." When purchasing services and supports, regional centers shall ensure conformance with its purchase of service policies, utilization of generic services and supports when appropriate, utilization of other sources of funding as contained in section 4659, and consideration of a family's responsibility for providing similar services and supports for a minor child without disabilities, taking into account a consumer's need for extraordinary care, services, supports and supervision. (§ 4646.4, subd. (a).)

6. A regional center may purchase services or supports for a consumer from any individual or agency pursuant to vendorization or a contract. (§ 4648, subd. (a)(3).) "Vendorization or contracting is the process for identification, selection, and utilization of

service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service." (§ 4648, subd. (a)(3)(A).) The requirements for vendorization are set forth in detail at California Code of Regulations, title 17, section 54302 et seq.

7. A "voucher" is "any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization that enables the consumer or family member to choose his or her own service provider." (§ 4512, subd. (i).)

8. (A) A regional center may offer vouchers to family members to allow the families to procure their own day care services, provided that the voucher shall be used in lieu of, and shall not exceed the cost of services the regional center would otherwise provide, and be issued only for services which are unavailable from generic agencies." (Cal. Code Regs., tit. 17, § 54355, subd. (a).)

(B) If a family member accepts a voucher to procure their own service, the regional center shall vendor either the vouchered family member or the provider of the vouchered service. (Cal. Code Regs., tit. 17, § 54355, subd. (e).) If the vouchered family member is to be vendored to procure their own day care service, the family member must meet the criteria specified in regulation section 54355, subdivision (g)(1)(A). Those criteria require that the vendored family member is a family member of the consumer, is not the direct provider of the day care service, and selects the day care service for the consumer from an agency that meets the criteria specified in regulation section 54342, subdivision (a)(4)(A) [adult day care] or subdivision (a)(16) [child day care].⁴ For child day care, the day care provider must possess a license issued by DSS. (Cal. Code Regs., tit. 17, § 54342, subd. (a)(16).) Family members to whom a voucher is issued shall only be vendored as the provider of the service for which the voucher is issued. (Cal. Code Regs., tit. 17, § 54355, subd. (f).)

9. In this case, the Service Agency is not required to issue a voucher to claimant's family to purchase afterschool day care services from Top Learning Center. The service for which a voucher is sought, afterschool day care, is a service that is available from a generic agency, the Los Cerritos YMCA. HRC has offered and is ready to purchase those day care services from the Los Cerritos YMCA for claimant. Even if claimant qualified for a voucher, the voucher could not be used to purchase day care from Top Learning Center. No evidence was presented that Top Learning Center possesses a valid day care license issued by DSS.

10. Further, the Service Agency may not purchase day care services directly from Top Learning Center because it is not a vendored provider. The Service Agency made every

⁴ Section 54355, subdivision (g)(1)(A)(3)(b), incorrectly cites subdivision (a)(15) of section 54324 as the criteria for child care. The correct subdivision is (a)(16). Subdivision (a)(15) is for camping services.

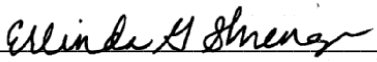
effort to accommodate claimant's preference for Top Learning Center. Claimant's HRC counselor visited the program and assisted the program's director with starting the vendor application process. Top Learning Center chose not to complete the vendorization process. Without vendorization, HRC is prohibited from purchasing services from Top Learning Center.

11. Based on the foregoing, the Service Agency is not required to provide a voucher to claimant's family for the purchase of afterschool day care services at Top Learning Center. Claimant's appeal shall be denied.

ORDER

Claimant's appeal is denied.

DATED: July 5, 2013



ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.